

# United States Senate

WASHINGTON, DC 20510

June 26, 2018

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai:

We write in response to the Federal Communications Commission's (FCC) Public Notice, seeking comment on the interpretation of the Telephone Consumer Protection Act (TCPA) in light of a recent decision by the D.C. Circuit Court of Appeals. As you continue with this proceeding, we urge you to ensure that key robocall and robotext protections under the TCPA remain in effect.

Recently, the D.C. Circuit Court of Appeals struck down portions of a 2015 Federal Communications Commission (FCC) Omnibus Declaratory Ruling and Order limiting the definition of automatic telephone dialing systems (auto dialers), which are technologies that can be used to rapidly call and text large groups of consumers. The ruling also vacated rules discouraging callers from making more than one unwanted call or text to a reassigned number. While the Court maintained the right to revoke consent, the Court's ruling could be interpreted to suggest that callers could limit consumers' method to revoke consent to receive robocalls and robotexts through provisions buried in contracts or service agreements. This interpretation would upend the meaning and the goals of the TCPA.

In an era when the onslaught of unwanted and abusive robocalls is on the rise, we are concerned that the absence of core protections would result in even more invasive calls and texts. Without swift and robust action by the FCC to ensure these sensible protections are in place, consumers may lose the right to both provide and revoke consent, subjecting them to a deluge of unwanted calls and texts. We respectfully request that you adopt the following important consumer safeguards:

- *Comprehensive Auto Dialer System Definition* – When Congress passed the TCPA in 1991, one goal was clear: whether at home or on their mobile phones, consumers should not be subject to intrusive and unsolicited robocalls and robotexts. While technology has changed, that key goal has not. Therefore, we urge you to establish a comprehensive definition of the term auto dialer, and use the FCC's exemption authority to carve out ordinary devices like smartphones that are not being ordinarily used to auto dial consumer en masse. Doing so ensures calling parties using automated dialing equipment to make calls or texts en masse must first obtain affirmative consent from consumers. Further, the FCC should uphold Congress' intent to cover all callers using auto dialers, not exclusively those using artificial-voice or prerecorded messages.
- *Reassigned Number Protections* – Periodically, consumers receive unwanted robocalls and robotexts because the previous holder of the phone number, not the current holder,

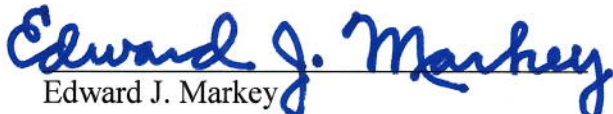
provided consent. Calls and texts to reassigned numbers are both a nuisance and a clear violation of the TCPA. We encourage you to maintain aggressive protections restricting unwanted calls and texts to reassigned numbers. To do so, the FCC should reaffirm that the term ‘called party’ means the actual party that is called, not the intended recipient of the call. The FCC should also ensure that callers continue to face liabilities for these illegal calls and texts in any future TCPA order or rulemaking.

- Revocation of Consent – Consent is the cornerstone of the TCPA, for it affirms that consumers have the right to avoid and stop receiving unwanted calls and texts. This fundamental right is not suspended upon initially providing consent. Rather, consumers should always have a reasonable means to revoke consent at any time should they no longer wish to receive robocalls and robotexts. We respectfully request that you reiterate that consumers always have the right to revoke consent, regardless of any contractual clauses that may be included in user agreements. We also request that you require callers to notify consumers of their right to revoke consent.

It is the FCC’s obligation to use its existing authority to reestablish robust, enforceable protections to enhance the precious zone of privacy created by the law. We urge you to fulfill your statutory obligations to establish these important protections.

Thank you for your attention to this important matter. If you have any questions, please have a member of your staff contact Daniel Greene of Senator Markey’s office at 202-224-2742.

Sincerely,

  
Edward J. Markey  
United States Senator

  
Robert Menendez  
United States Senator

  
Kirsten Gillibrand  
United States Senator

  
Elizabeth Warren  
United States Senator

  
Ron Wyden  
United States Senator

  
Catherine Cortez Masto  
United States Senator



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Tina Smith  
United States Senator



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Sheldon Whitehouse  
United States Senator



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Tammy Baldwin  
United States Senator



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Richard Blumenthal  
United States Senator



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Bernard Sanders  
United States Senator



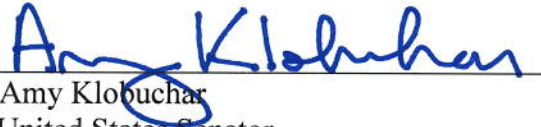
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Margaret Wood Hassan  
United States Senator



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Jack Reed  
United States Senator



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Amy Klobuchar  
United States Senator